

AMENDED IN ASSEMBLY AUGUST 24, 2006

**SENATE BILL**

**No. 1141**

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**Introduced by Committee on Budget and Fiscal Review**

January 10, 2006

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An act relating to the ~~Budget Act of 2006~~ to amend Section 63049.1 of, and to add Section 63049.55 to, the Government Code, relating to state funds.

LEGISLATIVE COUNSEL'S DIGEST

SB 1141, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2006. Tobacco assets: sales.~~

*Under existing law, the Infrastructure and Economic Development Bank is authorized to sell for, and on behalf of, the state all or any portion of the state's tobacco assets, which are the tobacco lawsuit moneys required to be allocated to the state under the Master Settlement Agreement, to a special purpose trust to provide collateral and security for the issuance of bonds, as specified.*

*This bill would specify that the pledge of any of these assets, or any residual interests therein, shall have priority in accordance with its terms and shall not be subject to certain laws relating to secured transactions and the perfection of transfer of rights in certain actions and instruments. It would provide that the proceeds of the sale of any residual interests in the assets would be deposited in the Tobacco Asset Sales Revenue Fund, which would be created by the bill, for the purpose of maintaining a separate account for the investment of proceeds received from the sale of any residual interests in tobacco assets.*

*Existing law limits the amount of proceeds the state may receive from the sale of these assets to provide up to \$5,000,000,000 in bonds.*

*This bill would eliminate that limitation.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2006.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. It is the intent of the Legislature to enact~~  
2 ~~statutory changes relating to the Budget Act of 2006.~~

3 *SECTION 1. Section 63049.1 of the Government Code is*  
4 *amended to read:*

5 63049.1. (a) Subject to subdivision (c) *and subdivision (d),*  
6 *as applicable,* the bank is hereby authorized to sell for, and on  
7 behalf of, the state, solely as its agent, all or any portion of the  
8 tobacco assets, *or any residual interests therein,* to a special  
9 purpose trust which is hereby established as a not-for-profit  
10 corporation solely for that purpose and for the purposes  
11 necessarily incidental thereto, and to enter into one or more sales  
12 agreements with the special purpose trust as and on the terms it  
13 deems appropriate, which may include covenants of, and binding  
14 on, the state necessary to establish and maintain the security of  
15 the bonds and exemption of interest on the bonds from federal  
16 income taxation. The principal office of the special purpose trust  
17 shall be located in Sacramento County. The articles of  
18 incorporation of the special purpose trust shall be prepared and  
19 filed, on behalf of the state, with the Secretary of State by the  
20 bank, and the five voting members of the State Public Works  
21 Board shall serve ex officio as the directors of the special  
22 purpose trust. Directors of the special purpose trust shall not be  
23 subject to personal liability for carrying out the powers and  
24 duties conferred by this article. The special purpose trust shall be  
25 treated as a separate legal entity with its separate corporate  
26 purpose as described in this article, and the assets, liabilities, and  
27 funds of the special purpose trust shall be neither consolidated  
28 nor commingled with those of the bank or the State Public Works  
29 Board.

30 The special purpose trust is hereby authorized to issue bonds,  
31 including, but not limited to, refunding bonds, on the terms it  
32 shall determine, and do all things contemplated by, and

1 authorized by, this division with respect to the bank, and enjoy  
 2 all rights, privileges, and immunities the bank enjoys pursuant to  
 3 this division, or as authorized by Section 5140 of the  
 4 Corporations Code with respect to public benefit nonprofit  
 5 corporations, or as necessary or appropriate in connection with  
 6 the issuance of bonds, and may enter into agreements with any  
 7 public or private entity and pledge the tobacco assets, *or any*  
 8 *residual interests therein*, that it purchased as collateral and  
 9 security for its bonds. The pledge of any of these assets *and*  
 10 *interests* and of any revenues, reserves, and earnings pledged in  
 11 connection therewith shall be valid and binding in accordance  
 12 with its terms and have priority in accordance with its terms from  
 13 the time the pledge is made and ~~amounts property~~ so pledged ~~and~~  
 14 ~~thereafter received~~ shall immediately be subject to the lien of the  
 15 pledge without the need for physical delivery, recordation, filing,  
 16 or other further act. *The pledge shall not be subject to Division 9*  
 17 *(commencing with Section 9101) of the Commercial Code or*  
 18 *Sections 954.5 and 955.1 of the Civil Code.* The special purpose  
 19 trust, and its assets and income, and bonds issued by the special  
 20 purpose trust, and their transfer and the income therefrom, shall  
 21 be exempt from all taxation by the state and by its political  
 22 subdivisions.

23 (b) (1) In order to assist the special purpose trust in financing  
 24 or refinancing the purchase of tobacco assets, *or any residual*  
 25 *interests therein*, by enhancing the security of the bonds issued  
 26 for that purpose, upon request by the Director of Finance, the  
 27 bank may include in, or add to, the sales agreement with the  
 28 special purpose trust a covenant, binding on the state, to the  
 29 effect that the Governor shall each year request from the  
 30 Legislature an appropriation line item in the annual Budget Act,  
 31 in a manner described further in this subdivision, from the  
 32 General Fund for allocation by the Department of Finance to the  
 33 special purpose trust in an amount equal to the debt service and  
 34 operating expenses scheduled, or, in the case of bonds bearing  
 35 variable rates of interest, estimated, to become due during the  
 36 next succeeding fiscal year on the bonds, including refunding  
 37 bonds, issued by the special purpose trust to finance or refinance  
 38 the purchase of tobacco assets, *or any residual interests therein*,  
 39 pursuant to that sales agreement.

(2) The appropriation referred to in paragraph (1) may provide that it will have an initial zero funding amount, but shall contain provisions authorizing the Director of Finance to make allocations in augmentation of the appropriation, without further legislative approval, from the General Fund, up to the amount certified by the special purpose trust to be necessary to cover the difference, if negative, between the amount of tobacco assets received by the special purpose trust pursuant to the sales agreement by the end of April of any calendar year, plus any other amounts available in the debt service reserve fund or other fund held by the trustee for the bonds, less the amount of debt service on the bonds and operating expenses scheduled, or in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding 12 months.

(3) Any amounts appropriated as provided in this subdivision shall be disbursed to the trustee for the bonds for the purpose of paying the debt service on the bonds and operating expenses specified in the certificate of the special purpose trust. Notwithstanding any other provision of this article, the Legislature shall not be obligated by this subdivision or any covenant made in a sales agreement, or any other provision of law, to appropriate or otherwise make funds available to pay debt service on the bonds or operating expenses.

(c) Based upon the terms of the sale agreements and bonds as established by the special purpose trust pursuant to subdivision (a) or (b), tobacco assets, *or any residual interests therein*, may be sold pursuant to this article, whether at one time or from time-to-time, ~~only in an amount or amounts necessary to provide the state with up to five billion dollars (\$5,000,000,000) exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing this article, including, but not limited to, the cost of financing one or more reserve funds, any credit enhancements, costs incurred in the issuance of bonds, and operating expenses.~~ The net proceeds of sale of any tobacco assets by the bank shall be deposited in the General Fund, *except that the proceeds from the sale of any residual interests therein shall be deposited in the Tobacco Asset Sales Revenue Fund established pursuant to Section 63049.55.* The use and application of the proceeds of any sale of tobacco

1 assets, or any residual interests therein, or bonds shall not in any  
2 way affect the legality or validity of that sale or those bonds.

3 (d) On or after January 1, 2007, no bonds issued by the  
4 special purpose trust to finance or refinance the purchase of any  
5 tobacco assets, or any residual interests therein, shall include  
6 any enhancement of security pursuant to subdivision (b), other  
7 than refunding bonds for the purpose of refinancing or refunding  
8 existing enhanced bonds previously issued.

9 SEC. 2. Section 63049.55 is added to the Government Code,  
10 to read:

11 63049.55. (a) The Tobacco Asset Sales Revenue Fund is  
12 hereby established in the State Treasury for the purpose of  
13 maintaining a separate account for the investment of proceeds  
14 received from the sale of any residual interests in tobacco assets  
15 and for the investment earnings on those proceeds.

16 (b) Pursuant to Article 4 (commencing with Section 16740) of  
17 Chapter 3 of Part 2 of Division 4 of Title 2, moneys in the fund  
18 may be transferred to the Surplus Money Investment Fund for  
19 investment, as long as that transfer does not jeopardize the  
20 tax-exempt status of the bonds.

21 (c) Upon direction by the Director of Finance, moneys in the  
22 fund shall be transferred to the General Fund.

23 (d) Pursuant to Section 16310, moneys in the fund may be  
24 borrowed for daily cash flow use by the General Fund.